

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 5616 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE MD SHAH

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1 Whether Reporters of Local Papers may be
allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

4 Whether this case involves a substantial
question of law as to the interpretation
of the constitution of India, 1950 or any
order made thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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SHAKUNTLA W/O JAYSUKH BACHUBHAI PARMAR (CHHARA) -

Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,

MrL R Pujari, AGP for Respondent(s) :

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CORAM : HONOURABLE MR.JUSTICE MD SHAH

Date : 12/12/2007

ORAL JUDGMENT

1. By way of this petition, the petitioner- lady
detenu, has challenged the order dated 7.2.2007 passed by
the Commissioner of Police, Ahmedabad City, in exercise

of powers under section 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, 'the Act') declaring the petitioner to be a "bootlegger" within the meaning of the PASA Act. In pursuance of the said impugned order the petitioner is detained in jail.

2. From the grounds of detention, it appears that there are six offences being CR. I. No. 1 of 2006, 964, 5390, 5407, 5514 of 2006 and 5018 of 2007 registered against the petitioner under sections 66 B, 65 E etc. under the Bombay Prohibition Act wherein huge quantity of country liquor/raw materials was found from her possession. So far as the first offence is concerned she was found with 2000 litres of wash/raw material, used for manufacturing liquor but so far as the other offences are concerned, it was found that she was selling country liquor. On the basis of registration of these cases, the detaining authority held that the present detenu, was carrying activities of selling country liquor which is harmful to the health of the public. It is held by the detaining authority that as she is indulged in illegal activities, it is required to restrain her from carrying out further illegal activities i.e. selling of country liquor.

3. It was submitted by the learned advocate for the petitioner that the representation made by the

detenu on 12.2.2007 which was received by the detaining authority on 13.2.2007 was approved by the Government on 15.2.2007 and the detaining authority himself has rejected the representation on 17.2.2007. On going through the relevant papers, it appears that there was a delay of 4 days caused in considering the representation of the detenu and it is the duty of the detaining authority to forward the representation to the Home Department of the State for considering the same but the detaining authority has failed to do so and decided the same on his own. Except the aforesaid cases under the provisions of Prohibition Act, no other offence was registered against the present petitioner-lady detenu. Therefore, on the ground of the delay in deciding the representation, the subjective satisfaction of the detaining authority is vitiated on account of non-application of mind and hence the impugned order deserves to be quashed and set aside.

4. So far as relying on the statements of the unnamed witnesses, it is well settled principle as laid down in the case of **Ashokbhai Jivraj @ Jivabhai Solanki v. Police Commissioner, Surat (2000(1) GLH 393**, having considered the decision of the Hon'ble Apex Court in the case of **Ram Manohar Lohia v. State of Bihar** (AIR 1966 SC 740), this court held that the cases, wherein the

detention order passed on the basis of the statements of the witnesses falls under the maintenance of "law and order" and not public order".

5. Considering the above decision, it is clear that before passing an order of detention of a detenu, the detaining authority must come to a definite finding that there is threat to the "public order" and it is very clear that the present case would not fall within the category of threat to a public order. In that view of the matter, when the order of detention has been passed by the detaining authority without having adequate grounds for passing the said order as also when there is delay in deciding the representation, the impugned order cannot be sustained and, therefore, it deserves to be quashed and set aside.

6. In the result, this Special Civil Application is allowed. The order of detention dated 7.2.2007 passed by the Police Commissioner, Ahmedabad, is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly. Direct service is permitted.

[M.D. SHAH, J.]

*m**s**p*